

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5963

IN THE MATTER OF:

Served August 15, 2000

Application of DOUBLE DECKER BUS)	Case No. AP-95-21
TOURS W.D.C., INC., Trading as)	
DOUBLE DECKER BUS WASHINGTON, D.C.,)	
for a Certificate of Authority --)	
Irregular Route Operations)	

Pursuant to Commission Rule No. 26-04, the Commission hereby reopens this proceeding to determine whether Certificate of Authority No. 314 was granted and/or issued in error, contrary to the public interest.

Under Title II of the Compact, Article XIII, Section 3(a), the Commission may later rectify an error committed during the course of granting or issuing a certificate of authority.¹ Information recently received by the Commission -- information that Double Decker apparently concealed during the prosecution of its application for operating authority -- indicates that error was committed during the course of granting or issuing Certificate No. 314.

The Commission conditionally approved Double Decker's application for a certificate of authority on August 9, 1995, in Order No. 4642, over the protest of Old Town Trolley Tours of Washington, Inc., WMATC Carrier No. 124. Old Town petitioned for reconsideration of Order No. 4642 in part on the ground that Double Decker had not demonstrated compliance with United States Department of Transportation (DOT) safety regulations pertaining to imported motor vehicles. We responded in Order No. 4730, served January 4, 1996, that this issue should have been raised before Order No. 4642 was issued and that the best evidence a carrier's vehicles satisfy federal motor carrier safety standards is proof that such vehicles have passed inspection under 49 C.F.R. Part 396.

Double Decker subsequently proffered copies of inspection certificates for seven buses. The certificates were issued under the auspices of the Virginia State Police. Virginia's Superintendent of State Police has adopted the Federal Motor Carrier Safety Regulations appearing at 49 C.F.R. Parts 390-97 for application in the Commonwealth.² The Superintendent's vehicle inspection program has been held to meet federal standards.³

Double Decker's inspection certificates list 1967 as the year of manufacture for five of the seven buses. This information is

¹ In re V.I.P. Tours, No. MP-94-02, Order 4266 (Mar. 28, 1994).

² 19 Virginia Administrative Code §§ 30-20-20; 30-20-30; 30-20-40; 30-20-50; 30-20-80; 30-20-200; 30-20-220.

³ 59 Fed. Reg. 17830 (1994).

important because at the time Double Decker had its buses inspected, several of the standards under Part 393 depended on the year of manufacture, including the standards for lights,⁴ brakes,⁵ brake failure warning signals,⁶ emergency exits,⁷ fuel tanks,⁸ seat belts,⁹ and emergency warning devices.¹⁰ It now appears that 1967 was not the year of manufacture for any of Double Decker's buses.

The Commission has in its possession a copy of a transcript of a hearing held September 15, 1999, before the Honorable John W. Bissell, United States District Court Judge for the District of New Jersey. The transcript contains the testimony of Walter Timpone, Esquire, who was appearing on behalf of Double Decker's commonly-controlled affiliate, New York Apple Tours (NYAT) for the purpose of entering NYAT's plea of guilty to two counts of illegally importing double-decker buses from England between 1991 and the latter part of 1995. In the transcript, NYAT admits through Mr. Timpone to misrepresenting the year of manufacture of 70 buses on documents submitted to the United States Customs Service, the United States Department of Transportation (DOT) and the United States Environmental Protection Agency (EPA).¹¹ The transcript recites NYAT's admission that NYAT altered the documents by whitening out the correct year of manufacture and substituting 1967.¹² The transcript further recites NYAT's admission that the alterations were made knowingly, willfully and with the purpose of making it appear that the buses were exempt from DOT and EPA standards and requirements.¹³ The transcript concludes by noting the Court's acceptance of NYAT's guilty plea.¹⁴

One of Double Decker's WMATC buses, vehicle no. 7505258, is specifically discussed at page 26 of the transcript.

Q On or about May 25, 1995, did Apple Tours import a 1976 Daimler bus, Vin Number 7505258, and falsely and knowingly state to EPA and DOT that the bus was manufactured in 1967?

A Yes.

There is some evidence that Double Decker was aware of the correct year of manufacture of each of its vehicles at the time they were titled, registered and inspected in Virginia. The issue of

⁴ 49 C.F.R. § 393.11 (1995).

⁵ 49 C.F.R. § 393.40(1995).

⁶ 49 C.F.R. § 393.51(1995).

⁷ 49 C.F.R. § 393.61(1995).

⁸ 49 C.F.R. § 393.65 & .67(1995).

⁹ 49 C.F.R. § 393.93(1995).

¹⁰ 49 C.F.R. § 393.95(1995).

¹¹ Tr. at 23-26.

¹² Tr. at 25.

¹³ Tr. at 25.

¹⁴ Tr. at 31.

vehicle origin had been hotly contested in this application proceeding back in 1995. NYAT had been accused of operating unlicensed buses in New York while this proceeding was pending.¹⁵ Double Decker undertook to assure the Commission that the seven vehicles it proposed operating were not involved.¹⁶ When Commission staff pointed out that Double Decker's seven buses were among those NYAT had identified as being in its possession,¹⁷ Double Decker had its vice president, Hayim Grant, who also was NYAT's president, file an affidavit to set the record straight.¹⁸

Mr. Grant testified that he had personal knowledge of and was competent to testify about the origin of Double Decker's vehicles.¹⁹ He testified that Double Decker's buses were "purchased directly by Double Decker from vendors in London" and were "refurbished and remodeled in New York to meet U.S. requirements."²⁰ NYAT's admission now reveals that the year of manufacture was falsified for five of Double Decker's seven imported buses to evade U.S. requirements, not to meet them. If we are to believe Mr. Grant's avowal of personal knowledge, it is difficult not to conclude that he was aware of the falsification.

In any event, the evidence now before us indicates that Double Decker misrepresented to Virginia authorities the year of manufacture of five vehicles and that the corresponding inspection certificates are therefore invalid. It follows that Certificate No. 314 was issued in error.

Furthermore, had the Commission known of the deception apparently practiced by NYAT and Double Decker prior to the issuance of Order No. 4642, the Commission would not have found Double Decker fit²¹ as required by Article XI, Section 7(a)(i), of the Compact. And the Commission could not have found Double Decker's plan to operate unsafe vehicles²² consistent with the public interest as required by Article XI, Section 7(a)(ii), of the Compact. It follows that Certificate No. 314 also was granted in error.

THEREFORE, IT IS ORDERED:

1. That Double Decker and Old Town remain parties to this proceeding.

¹⁵ Order No. 4730 at 1.

¹⁶ Id. at 3-4.

¹⁷ Id. at 4 & n.13.

¹⁸ Affidavit of Hayim Grant (Oct. 11, 1995) (appended to Objection to Motion to Lodge Letters) (Oct. 11, 1995)).

¹⁹ Hayim Grant Aff. at 1.

²⁰ Id. at 2.

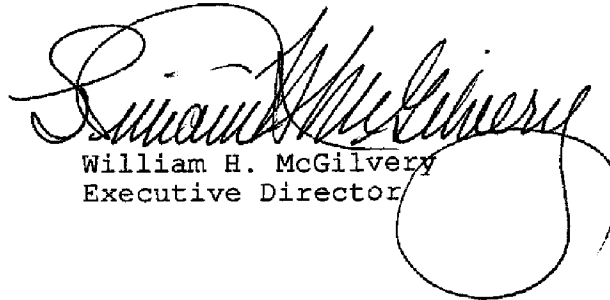
²¹ See In re V.I.P. Tours, No. AP-83-10, Order No. 2504 (Dec. 2, 1983) (on reconsideration) (violations of federal, state or local laws bear on a carrier's fitness), aff'd per curiam, No. 83-2341, judgment (D.C. Cir. Jan. 25, 1985).

²² An improperly inspected vehicle is presumptively unsafe. In re Safe Transp., Inc., No. MP-96-15, Order No. 4849 (May 17, 1996).

2. That Double Decker shall have 30 days from the date of this order to show cause why Order No. 4642 and Certificate of Authority No. 314 should not be rescinded.

3. That Double Decker shall have 15 days from the date of this order to file a request for oral hearing showing good cause for such a hearing, including a description of the evidence to be adduced and an explanation of why it cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director